IN THE SUPREME COURT OF THE STATE OF DELAWARE

STEVEN L. HICKMAN,	§	
	§	No. 593, 2005
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for Sussex County
STATE OF DELAWARE,	§	Cr. ID Nos. 9907002077
	§	9901022507
Plaintiff Below-Appellee.	§	
	§	

Submitted: February 17, 2006
Decided: May 9, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

O R D E R

This 9th day of May 2006, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Steven L. Hickman, filed an appeal from the Superior Court's October 31, 2005 order denying his motion for sentence modification and his motion for reconsideration. We find no merit to the appeal. Accordingly, we affirm.

(2) In April 1999, Hickman pleaded guilty to Possession of a Destructive Weapon, Resisting Arrest, and Driving With a Suspended License. He was sentenced to a total of 2 years incarceration at Level V, to be suspended for 2 years of probation. On April 25, 2000, Hickman pleaded

guilty to Delivery of Cocaine Within 1,000 Feet of a School. He was sentenced on that conviction to 15 years incarceration at Level V, to be suspended after 5 years and successful completion of the Key Program to decreasing levels of supervision. In December 2000, Hickman was found to have violated his probation ("VOP") in connection with his 1999 sentences. His probation was revoked and he was sentenced to a total of 2 years of Level V incarceration.[1]

(3) In this appeal, Hickman claims that he will serve more Level V time than was originally intended by the sentencing judge. Specifically, he argues that, because he did not begin the Key Program until after his 5-year prison term was over, then spent 10 months in the Key Program, and then began serving his VOP sentences, he will serve 10 months more Level V time than was contemplated in the original sentencing order. As support for his claim, Hickman refers to the following comment by the judge at his sentencing hearing: ". . . I expect, Mr. Hickman, that, if at the end of four years you haven't been moved to the Key program, I expect you're going to notify me."

[1] It appears that Hickman also was sentenced by the Court of Common Pleas to 1 year of Level V incarceration for Resisting Arrest, which was suspended for 1 year of Level II probation.

(4) The record reflects that the intent of the sentencing judge is clearly set forth in two letters written to Hickman in response to his previous motions for sentence modification. In a letter dated July 21, 2003, the judge states as follows: "The Court has been made aware of your refusal to enter into the Key treatment program. The sentence imposed upon you on April 25, 2000 was part of plea negotiations in which you participated. . . . If you choose to refuse to enter the Key program, despite your previous agreement to do so, this will result in tripling your jail sentence. The purpose of this letter is to make you aware that your fate is in your hands."

(5) In another letter dated August 19, 2003, the judge states as follows: "As recently as July 21, 2003, I have corresponded with you regarding your refusal to successfully complete the Key program. On August 15, 2003, the Court received another Motion for Modification from you. In same, you note that the Court told you to get back at the end of four years, i.e. September 9, in the event you weren't in the Key program. . . . I was advising you that I was not going to modify your sentence, nor was I going to direct that you be entered into the Key program early. Your sentence was five (5) years AND completion of the Key program. They usually do not move persons into the Key program until the latter part of their sentence. That is why I said write to me if you weren't in by

September 9, 2003. You've gotten into the Key program but you've also been booted out. It is your responsibility to get in, stay in, and graduate."

(6) The sentencing judge's intent is clear. Under the sentencing order, Hickman's sentence for delivery of cocaine was 5 years at Level V and completion of the Key program. The judge did not intend, as asserted by Hickman, that Hickman's participation in the Key program would reduce his Level V sentence. Hickman has provided no evidence that any of his sentences exceeded the statutory maximum or were illegal in any respect.[2] As such, the Superior Court properly denied his motion for sentence modification.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

[2] *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).